

TESTIMONY

Presented by: Patrick Fahn
Director of Public Utilities
Public Service Commission

Before: Administrative Rules Committee
Honorable Bill Devlin, Chairman

RE: N.D. Admin. Code Sections 69-02-04-01 and 02
N.D. Admin. Code Section 69-02-07-02
N.D. Admin. Code Sections 69-02-09-01, 02, and 13

(PSC Case No. AD-17-49)

Date: September 12, 2017

Mr. Chairman and committee members, my name is Patrick Fahn. I am the Director of Public Utilities for the North Dakota Public Service Commission. The Commission asked me to testify today concerning rules recently promulgated by the Public Service Commission.

Our responses to your questions are presented below. In each case, the question is restated prior to our response.

1. **Whether the rules resulted from statutory changes made by the Legislative Assembly.**
No.
2. **Whether the rules are related to any federal statute or regulation. If so, please indicate whether the rules are mandated by federal law or explain any options your agency had in adopting the rules.**
No.
3. **A description of the rulemaking procedure followed in adopting the rules, e.g., the type of public notice given and the extent of public hearings held on the rules.**

On January 31, 2017, the North Dakota Public Service Commission issued a formal Notice of Intent to Amend Administrative Rules and Notice of Public Hearing and an Abbreviated Notice proposing to revise the rules before you today.

The Abbreviated Notice was published once in each of the 52 official county newspapers the week of February 10 through February 23, 2017. The notices were also forwarded to the Legislative Council for publication on February 2, 2017, which was at least 30 days in advance of the public hearing.

A public hearing was noticed for and held on March 15, 2017, beginning at 1:30 p.m., Central Time, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until April 17, 2017, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

- 4. Whether any person has presented a written or oral concern, objection, or complaint for agency consideration with regard to these rules. If so, describe the concern, objection, or complaint and the response of the agency, including any change made in the rules to address the concern, objection, or complaint. Please summarize the comments of any person who offered comments at the public hearings on these rules.**

N.D. Admin. Code Sections 69-02-04-01 and 02 (Rate Case Bill Stuffers and Formal Appearance of Staff Analysts), and Section 69-02-07-02, Proposed Rules Procedure

The only comment or testimony received was from staff. Staff testified that the existing bill stuffer rule (section 69-02-04-01) lists several cases in which the applicant utility must provide individual notice of the application to customers. The proposed change adds one additional type of case, an advanced determination of prudence case, to this list. Advanced determination of prudence cases have ratemaking consequences and therefore should require individual customer notice. Current practice is to require and provide individual customer notices in these types of cases due to the ratemaking consequences, so the rule change should have no impact on industry, customers, the public, or other stakeholders.

Staff testified that the existing rule on appearances (section 69-02-04-02) requires that staff analysts who work on the case be noted in the appearances. At hearings, counsel introduces the staff who are present and working on the

case, but the rule requiring these staff members be listed in the appearances section has been inconsistently followed and serves no discernable purpose. In addition, it could imply that staff analysts are engaging in the unauthorized practice of law. Repealing the language would have no impact on any stakeholder.

Staff explained that the propose rule regarding the post-hearing comment period for proposed procedural rules is proposed to eliminate an outdated requirement to file proposed rules and rules notices with the Legislative Council at least thirty days before the hearing. Current law requires filing with the legislative Council, but does not impose a time requirement on this filing. The other change is to reduce the post-hearing comment period from thirty days to ten days.

Both changes would result in making the Commission's rulemaking procedure consistent with the procedure specified in North Dakota Century Code Chapter 28-32. Neither change should have any impact on any stakeholder.

The Commission's Order discusses the comments, and the Commission's conclusions. A copy is attached.

N.D. Admin. Code Sections 69-02-09-01, 02, and 13

Staff testified that current rules prescribe protection of information filed by telecommunications companies in the annual report to the commission which includes detailed information concerning telecommunications infrastructure projects and detailed information regarding service outages.

The proposed rule extends this "prescribed" protection to those two information types contained in any filing with the commission, and expands this prescribed protection to disaggregated data on provisioned volumes of local services by service type and local exchange, disaggregated data on provisioned volumes and associated revenue of switched access traffic by jurisdiction or local exchange, and any financial information that is protected by a Federal Communications Commission Protective Order.

The Commission receives 80 or more filings each year that contain some or all of these information types. The proposed rule regarding information that both the industry and the Commission have found should be protected; and removing the requirement to file an application, the requirement for staff analysis, and the requirement for a Commission decision each time these types of

information are filed; will result in a more efficient administrative process and will save resources for both the regulated community and the agency.

In addition to the testimony of staff, one comment was received from David Crothers on behalf of the North Dakota Association of Telecommunications Cooperatives. The association supported the proposed rule.

Mr. Crother's comments stated that the Association is fully supportive of the proposed rule changes pertaining to procedures for protecting information from disclosure. He further stated that the Association believes adopting the proposed amendment will bring a clarity and common understanding of data that must be filed with the North Dakota Public Service Commission, as well as remove any ambiguities regarding when trade secret or confidential treatment of data must be requested by a telecommunications company. Adoption of the proposed rule will, in the Association's judgment, continue to fully protect members and subscribers, provide the necessary protections in a highly competitive marketplace, and reduce paperwork and resources for telecom companies.

The Commission's Order discusses the comments and the Commission's conclusions. A copy is attached.

5. The approximate cost of giving public notice and holding any hearing on the rules and the approximate cost (not including staff time) of developing and adopting the rules.

The total cost for publishing the notices was \$2,426.08. Other than staff time, no other significant costs were incurred.

6. An explanation of the subject matter of the rules and the reasons for adopting those rules.

The proposed rules consist of changes to the Public Service Commission's procedural rules in the following areas: individual customer notice in cases related to utility rates (bill stuffers); appearances at formal hearings; filing proposed rules with Legislative Council, post-hearing comment period for proposed rules; and protection of certain information filed by telecommunications companies.

One additional type of utility filing will be included with the existing types of filings for which individual utility customer notice is required. The requirement that staff who work on formal cases be noted as making a formal appearance is

being deleted. The 'thirty days before hearing requirement' for filing proposed rules with the Legislative Council is being eliminated to make the rules consistent with North Dakota Century Code Chapter 28-32. The 30-day comment period after a rules hearing is being revised to 10 days, also to make the procedure consistent with statutory requirements. Finally, changes are proposed to permit telecommunication companies to file, and the commission to protect, certain information without the need for an application, a staff analysis, or a commission order.

The Commission's Order discusses the basis for each rule, the comments, and the Commission's conclusions. A copy is attached.

7. Whether a regulatory analysis was required by North Dakota Century Code (N.D.C.C.) § 28-32-08 and whether that regulatory analysis was issued. Please provide a copy.

Since none of the proposals will impact the regulated community by more than \$50,000, and no one has requested a regulatory analysis, none was prepared for any of the proposed rule changes.

8. Whether a regulatory analysis or economic impact statement of impact on small entities was required by N.D.C.C. § 28-32-08.1 and whether that regulatory analysis or impact statement was issued. Please provide copies.

Each proposed rule could impact a small entity. However, the impact will be neutral or positive. Several of the proposals make the process involved more efficient and will save time and money for applicants and others interacting with the Public Service Commission. No alternatives were considered other than making no changes at all, which imposes a greater economic and regulatory burden on all impacted entities, including small entities and the agency.

A copy of the statement regarding the regulatory and small entity impact analyses is attached.

9. Whether these rules have a fiscal effect on state revenues and expenditures, including any effect on funds controlled by your agency. If so, please provide copies of a fiscal note.

No fiscal effect. Statement attached.

- 10. Whether a constitutional takings assessment was prepared as required by N.D.C.C. § 28-32-09. Please provide a copy if one was prepared.**

The proposed rules before you today would not limit the use of private real property and would not result in a taking or regulatory taking. A statement to this effect was prepared and a copy is attached.

- 11. If these rules were adopted as emergency (interim final) rules under N.D.C.C. § 28-32-03, provide the statutory grounds from that section for declaring the rules to be an emergency and the facts that support that declaration and provide a copy of the Governor's approval of the emergency status of the rules. If these rules were adopted as emergency (interim final) rules, what steps were taken to make the rules known to persons who can reasonably be expected to have a substantial interest in the rules?**

N/A

Mr. Chairman, this completes my testimony. I would be happy to respond to any questions the committee might have.

Summary for the Administrative Rules Committee

The prepared document provides responses to the Administrative Rules Committee questions. In summary:

- the rules did not result from statutory changes made by the Legislative Assembly
- the rules were not mandated by federal law
- the Commission issued a formal Notice of Intent to Amend Administrative Rules and Notice of Public Hearing, and published an Abbreviated Notice in the 52 official county newspapers
- no regulatory analysis was required on any of the changes
- the regulatory and small entity impact is neutral or positive
- there is no fiscal effect on state revenues and expenditures or funds controlled by the Commission
- the rules would not limit the use of private real property
- the rules would not result in a taking or regulatory taking
- the North Dakota Association of Telecommunications Cooperatives (Dave Crothers) commented in support of the changes to 69-02-04-01 and 02. Otherwise, there were no written or oral concerns, objections, or complaints for agency consideration.

1. ND Admin sections 69-02-04-01: regarding individual customer notice in utility rate related cases

The existing bill stuffer rule lists several cases in which the applicant utility must provide individual notice to customers (bill stuffers) because those filings have ratemaking consequences (impact rates to customers). The proposed change adds one additional type of filing, an advanced determination of prudence filing to this list since those filings also have ratemaking consequences. This proposed change was previously proposed and adopted by the Commission in 2014 (Case No. AD-14-762), but due to an inadvertent error, were never approved by the Attorney General and were never filed with the Legislative Council.

2. ND Admin sections 69-02-04-02: regarding appearances at formal hearings

The requirement that staff who work on formal cases be noted as making a formal appearance is being deleted. At hearings, counsel introduces the staff working on the case, but the rule requiring these staff members be listed in the appearances could imply that staff analysts are practicing law. This proposed change was previously proposed and adopted by the Commission in 2014 (Case No. AD-14-762), but due to an inadvertent error, were never approved by the Attorney General and were never filed with the Legislative Council.

3. ND Admin sections 69-02-07-02: regarding the filing and comment period time frames for the rulemaking process

One of the changes to this section eliminates an *outdated* requirement to file proposed rules and rules notices with the Legislative Council at least

thirty days before the hearing. **Current** law (N.D.C.C. section 28-32-10(1)(a)) requires filing with the Legislative Council, but does not impose a time requirement on this filing.

The other change reduces the post-hearing comment period from thirty days to ten days, consistent with North Dakota Century Code section 28-32-12.

With these changes, the Commission's rulemaking procedure is consistent with the procedure specified in North Dakota Century Code chapter 28-32.

4. ND Admin sections 69-02-04-01 and 02: regarding procedures for protecting certain information filed by telecommunications companies

Current rules prescribe protection for certain information filed by telecommunications companies. Information that is protected, without the need for the originator to file an application for protection, without the need for staff analysis, and without further action by the Commission, includes detailed information concerning telecommunications infrastructure projects and detailed information regarding service outages that is filed in an annual report to the Commission required under 69-09-05-12.1.

This rule change extends this "prescribed" protection to those two information types contained in **any** filing with the commission, and expands this prescribed protection to disaggregated data on provisioned volumes of local services by service type and local exchange, disaggregated data on provisioned volumes and associated revenue of switched access traffic by

jurisdiction or local exchange, and any financial information that is protected by a Federal Communications Commission Protective Order.

The Commission receives 80 or more filings each year that contain some or all of these information types. The rule change regarding information that both the industry and the Commission have found should be protected; and removing the requirement to file an application, the requirement for staff analysis, and the requirement for a Commission decision each time these types of information are filed; will result in a more efficient administrative process and will save resources for both the regulated community and the agency.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

ORDER SUBMITTING RULES TO ATTORNEY GENERAL

April 26, 2017

Appearances

Commissioners Randy Christmann and Julie Fedorchak

Preliminary Statement

On January 31, 2017, the North Dakota Public Service Commission (Commission) proposed changes to the Commission's administrative rules and issued a formal Notice of Proposed Rulemaking and an Abbreviated Notice proposing to revise Sections 69-02-04-01, 69-02-04-02, 69-02-07-02, and Chapter 69-02-09 of the North Dakota Administrative Code.

The proposed rules are summarized as follows:

Rate Case Bill Stuffers – N.D. Admin. Code Section 69-02-04-01

The proposed change to section 69-02-04-01 adds one type of case, an advance determination of prudence case, to the list of cases in which the applicant utility must provide individual notice of the application to customers.

Formal Appearance of Staff Analysts – N.D. Admin. Code Section 69-02-04-02

The proposal is to repeal the existing rule requiring the staff analysts who work on a case to be noted in the appearances.

Proposed Rules Procedure - N.D. Admin. Code Section 69-02-07-02

One change is to eliminate the time requirement for filing proposed rules and notices with the Legislative Council. The other change is to reduce the post-hearing comment period from 30 days to 10 days.

Protection of Information - N.D. Admin. Code Chapter 69-02-09

The purpose of this rulemaking is to protect specific information filed by telecommunications companies without the need for the originator to file an application, without the need for staff analysis, and without further action by the commission.

On February 1, 2017, Staff filed statements regarding the required regulatory analyses, small entity analyses, and takings assessments.

On February 2, 2017, the notices were filed with the Legislative Council for publication at least 30 days in advance of the hearing.

The weeks of February 10 through February 23, 2017, the Abbreviated Notice was published once in each of the 52 official county newspapers in the state.

On March 15, 2017, the Commission held the public hearing as noticed, beginning at 1:30 p.m., Central Time, in the Commission Hearing Room, 12th floor, State Capitol, Bismarck, North Dakota.

The Commission allowed, after the conclusion of the rulemaking hearing, a comment period until April 17, 2017, during which data, views, or oral arguments concerning the proposed rulemaking could be received by the Commission and made a part of the rulemaking record to be considered by the Commission.

Public Hearing and Comments

Commission staff testimony was the only comment received at the hearing. After the hearing, comments were filed by the North Dakota Association of Telecommunications Cooperatives only on the proposed changes to Chapter 69-02-09.

N.D. Admin. Code Section 69-02-04-01

Staff testified that an advance determination of prudence application has ratemaking consequences and that is the reason for requiring individual customer notice. Currently, even though the specific type of application is not mentioned in the rule, individual customer notices have been required and provided in advance determination of prudence cases because of the ratemaking impact. The proposed change will make the rule consistent with current practice and will have no fiscal or other impact on industry, customers, other stakeholders or the public.

N.D. Admin. Code Section 69-02-04-02

Staff testified that while the staff who work on a case are introduced by counsel at hearings, the rule requiring those persons to be listed in the appearances has been inconsistently followed and serves no discernable purpose. Repealing that language will have no impact on any stakeholder.

N.D. Admin. Code Section 69-02-07-02

Staff testified that both changes are proposed to make the procedure consistent with the procedure specified in North Dakota Century Code Chapter 28-32. These changes will have no impact on any stakeholder.

N.D. Admin. Code Chapter 69-02-09

Staff testified that the proposal is intended to permit certain Information to be protected without the need for the originator to file an application, without the need for staff analysis, and without further action by the commission includes detailed information concerning telecommunications infrastructure projects and detailed information regarding service outages.

The North Dakota Association of Telecommunications Cooperatives (NDATC) filed comments indicating that it fully supports the proposal. NDATC stated that adapting the proposed amendment will bring a clarity and common understanding of data that must be filed with the North Dakota Public Service Commission, as well as remove any ambiguities regarding when trade secret or confidential treatment of data must be requested by a company. Further, the NDATC stated the changed rule will continue to fully protect members and subscribers, provide the necessary protections in a highly competitive marketplace and reduce paperwork and resources for telecom companies.

Discussion

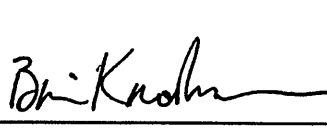
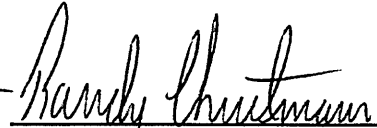
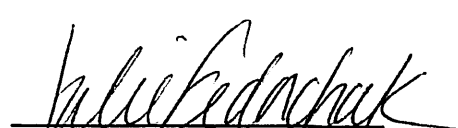
The Commission agrees with adopting the rules as originally proposed. The rationale provided by staff and the North Dakota Association of Telecommunications Cooperatives provides a sufficient basis to adopt the rules as proposed.

Having reviewed the proposed rules, and the testimony and comments received, the Commission finds good cause for submitting the revised proposed rules, attached to and made a part of this order, to the Attorney General for an opinion as to legality.

Order

The Commission orders the proposed changes to the North Dakota Administrative Code, as attached to and made a part of this order, be submitted to the Attorney General for an opinion that the rules are approved as to legality.

PUBLIC SERVICE COMMISSION

		
Brian Kroshus Commissioner	Randy Christmann Chairman	Julie Fedorchak Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

Proposed Rule

January 31, 2017

**CHAPTER 69-02-04
HEARINGS**

69-02-04-01. Notice. In those proceedings in which a hearing is to be held, the commission will assign a time and place for hearing. Notice of the hearing must be posted in the office of the commission, and must be served on the parties and other persons entitled to receive notice at least twenty days prior to the date set for the hearing except in cases of emergency or as otherwise provided by law.

In any proceeding, except rulemaking proceedings, involving the rights of persons who are members of the public generally, notice of hearing must be given by legal publication in the North Dakota daily newspaper of the affected area. Notice must be published at least twenty days prior to the date of the hearing.

An electric, gas, or telecommunications public utility shall provide individual customer notice as required below by billing insert, newsletter, or other appropriate method approved by the commission. The notice must indicate the place and date of the commencement of any hearing, informal hearing, or public input session that has been ordered by the commission, and that the public is invited to attend. Subject to the power of the commission to modify its contents and when applicable, the notice must include a summary sheet describing the absolute dollar and percentage impact of any

proposed rate or price changes by the various classes of services offered by the utility and must include a list of the utility's business office locations where the proposed rate or price schedules and a comparison of present and proposed rates or prices can be examined by the public. The notice must also contain in bold type the following statement when applicable: The rate changes described in this notice have been requested by (specific utility).

For electric and gas utilities, individual customer notice is required for an application for approval of a rate increase, purchase or sale, merger, or acquisition filed by the utility, and applications by the utility for alternative regulation. For electric and gas utilities, the commission may require the utility to provide individual customer notice to potentially affected customers in other rate proceedings, complaint cases, advance determination of prudence cases, and fuel and purchased gas adjustment proceedings.

For telecommunications utilities, individual customer notice is required for an application for a certificate of public convenience and necessity resulting from the sale, merger, or acquisition of an incumbent telecommunications company. The commission may require a telecommunications utility to provide individual customer notice to potentially affected customers in complaint cases.

The individual customer notices required by this section are separate from and in addition to any other customer notices required by law or rule, unless the commission authorizes the utility to satisfy multiple notice requirements with one notice.

History: Amended effective October 1, 1980; September 1, 1982; September 1, 1992; January 1, 2001; _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-05, 28-32-08, 49-01-07

69-02-04-02. Appearances. Each interested party shall enter an appearance at the beginning of the hearing by giving the party's name and address and briefly stating the capacity in which the party appears. All appearances must be noted on the record. ~~The name and position of each member of the commission's staff participating in the hearing or investigation must be included in the record as an appearance.~~

History: Amended effective September 1, 1992; _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 49-01-07

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

Proposed Rule

January 31, 2017

**CHAPTER 69-02-07
RULES**

69-02-07-02. Notice.

1. The commission will issue a notice that the rules are proposed and set for hearing which will include:
 - a. A short, specific explanation of the proposed rule;
 - b. A brief explanation of the purpose of the proposed rule;
 - c. A determination of whether the proposal impacts the regulated community in excess of fifty thousand dollars;
 - d. A location where the text of the proposed rule may be reviewed;
 - e. Notice to interested persons of the opportunity to submit written comments and to appear and testify at the hearing to offer oral testimony;
 - f. The address to which written comments may be sent;
 - g. The address and telephone number at which a copy of the proposed rules and regulation analysis may be requested; and
 - h. The date, time, and place of the hearing.

2. The commission will publish an abbreviated newspaper notice in each official county newspaper in the state.
3. The commission will file the notice of hearing and a copy of the proposed rules with the legislative council ~~at least thirty days before the hearing.~~
4. The public comment period on the proposed adoption, amendment, or repeal of any rule under this article will close ~~thirty~~ten days after conclusion of the public hearing, unless extended by the commission.
5. The commission will consider all written comments and oral testimony received before adoption, amendment, or repeal of any rule under this article and make a written record of its consideration.

History: Effective December 1, 1990; amended effective January 1, 2001;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-02, 49-01-07

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

Proposed Rule

January 31, 2017

**CHAPTER 69-02-09
PROCEDURES FOR PROTECTING INFORMATION FROM DISCLOSURE**

69-02-09-01. Application to protect information.

Except as provided in section 69-02-09-13, ~~an applicant~~ a person requesting protection of information in an administrative proceeding or in a response to a commission request for information shall file an application with the commission. The application must include at least the following:

1. A general description of the nature of the information sought to be protected.
2. The specific law or rule on which protection is based.
3. If the basis for protection is that the information is trade secret:
 - a. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
 - b. An explanation of why the information is not readily ascertainable by proper means by other persons;
 - c. A general description of the persons or entities that would obtain

- economic value from disclosure or use of the information;
- d. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
 - e. A description of the efforts used to maintain the secrecy of the information.
4. If the basis for protection is a reason other than that the information is trade secret, the specific basis or bases upon which the information qualifies for protection.
5. A redacted public version of the information, unless this requirement is waived by the commission. The amount redacted must be as minimal as possible. If it is not possible to file a redacted public version, a specific written request for waiver of the requirement and the reasons for requesting a waiver must be filed.

History: Effective March 1, 1994; amended effective April 1, 2015;_____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-02. Filing of application.

1. The application must be addressed to and filed with the executive secretary of the commission.
2. The protected material filed with the application or pursuant to section 69-02-09-13 must be separately bound and placed in a sealed envelope, or other appropriate, sealed container, which must be labeled: **PROTECTED INFORMATION - PRIVATE**. An original and seven copies of the public portion of the application must be filed unless this requirement is waived by the

commission. Only one copy of the protected material may be filed.

History: Effective March 1, 1994; amended effective April 1, 2015; _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-03. Processing the application.

When an application for protection of information is filed, the commission staff shall examine the information and application, and file and serve a response that includes a recommendation on whether the information qualifies for protection. If the basis for requesting protection is that the information is trade secret, the staff response must include a recommendation on whether the information is relevant and is trade secret, under the definition of trade secret in North Dakota Century Code section 47-25.1-01. The commission will make a determination on the application from the application, the recommendation, and any response received from those served.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-04. Protective order.

Upon a determination that information qualifies for protection, the commission shall issue a protective order limiting disclosure.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-05. Request for hearing - Who may request - Time - Burden of proof.

1. Upon a determination that the information does not qualify for protection,

the applicant will be notified and has seven days to request a hearing before the commission, or obtain appropriate injunctive relief from the courts. If no hearing is requested or the commission is not otherwise restrained, the information will become part of the public record without protection. The burden of proof in such a hearing is on the party seeking to prevent disclosure.

2. If any person disagrees with the designation of information as protected or with its nondisclosure, the person shall first attempt to informally dispose of the dispute with the party seeking to prevent disclosure. If the dispute cannot be resolved, any person may request a hearing before the commission to determine the protected status.

History: Effective March 1, 1994; amended effective April 1, 2015.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

69-02-09-13. Information filed under sections ~~69-09-05-12~~ and ~~69-09-05-12.1~~ by telecommunications companies.

Information filed to ~~comply with subdivision b of subsection 3 of section 69-09-05-12 or section 69-09-05-12.1~~ identified in subsections one through five of this section is protected without need for the originator to file an application and without further action by the commission, unless the commission orders otherwise. Sections ~~69-02-09-01~~ 69-02-09-01(1) through ~~69-02-09-04~~ 69-02-09-01(4), 69-02-09-02(1), 69-02-09-03, 69-02-09-04, and 69-02-09-05(1) do not apply to information filed to ~~comply with subdivision b of subsection 3 of section 69-09-05-12, or subsections 1, 2, or 3 of section 69-09-05-12.1~~ under this section.

1. Detailed information concerning telecommunications infrastructure projects.

2. Disaggregated data on provisioned volumes of local services by service type and local exchange.
3. Disaggregated data on provisioned volumes and associated revenue of switched access traffic by jurisdiction or local exchange.
4. Detailed information on service outages as defined in Title 47 Code of Federal Regulations, Part 4, Section 4.5, in effect as of January 30, 2017.
5. Financial information required by the Federal Communications Commission to be copied to the commission, accompanied by the filing of a copy of the Federal Communication Commission's Protective Order for that information.

History: Effective April 1, 2015; amended effective _____.

General Authority: NDCC 28-32-02

Law Implemented: NDCC 28-32-06, 47-25.1

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

**Statements on Regulatory Analysis, Small Entity Analysis,
and Takings Assessment**

31 January 2017

The proposed rules consist of changes to the Public Service Commission's procedural rules in the following areas: individual customer notice in cases related to utility rates (bill stuffers); appearances at formal hearings; filing proposed rules with Legislative Council, post-hearing comment period for proposed rules; and protection of certain information filed by telecommunications companies.

One additional type of utility filing will be included with the existing types of filings for which individual utility customer notice is required. The requirement that staff who work on formal cases be noted as making a formal appearance is being deleted. The 'thirty days before hearing requirement' for filing proposed rules with the Legislative Council is being eliminated to make the rules consistent with North Dakota Century Code Chapter 28-32. The 30 day comment period after a rules hearing is being revised to 10 days, also to make the procedure consistent with statutory requirements. Finally changes are proposed to permit telecommunication companies to file, and the commission to protect, certain information without the need for an application, a staff analysis, or a commission order.

None of these changes should have any sort of negative impact, financial or otherwise, on regulated industry, consumers, other stakeholders, the Commission, or the public. On the contrary, the proposed rules make the administrative process more efficient and most will save resources for both the regulated community and the agency.

Rate Case Bill Stuffers – N.D. Admin. Code Section 69-02-04-01

The proposed change to section 69-02-04-01 adds one type of case, an advance determination of prudence case, to the list of cases in which the applicant utility must provide individual notice of the application to customers. An advance determination of prudence application has ratemaking consequences and that is the reason for requiring individual customer notice. Currently, even though the specific type of application is not mentioned in the rule, individual customer notices have been required and provided in advance determination of prudence cases because of the ratemaking impact. The proposed change will make the rule consistent with current practice and will have no fiscal or other impact on industry, customers, other stakeholders or the public.

Formal Appearance of Staff Analysts – N.D. Admin. Code Section 69-02-04-02

Existing rule requires the staff analysts who work on a case to be noted in the appearances. While the staff who work on a case are introduced by counsel at hearings, the rule requiring those persons to be listed in the appearances has been inconsistently followed and serves no discernable purpose. Repealing that language will have no impact on any stakeholder.

Proposed Rules Procedure - N.D. Admin. Code Section 69-02-07-02

One change is to eliminate the time requirement for filing proposed rules and notices with the Legislative Council. The other change is to reduce the post-hearing comment period from 30 days to 10 days. Both changes are proposed to make the procedure consistent with the procedure specified in North Dakota Century Code Chapter 28-32. These changes will have no impact on any stakeholder.

Protection of Information - N.D. Admin. Code Chapter 69-02-09

The amendments allow protection for certain information filed by telecommunications companies, without need for an application, a staff analysis, or a commission order. Other procedures in the chapter still apply. The amendments also specify which of the procedures in the chapter do and do not apply to the filing of this information. These changes do not negatively impact the industry or any stakeholder. On the contrary, they make the administrative process more efficient and will save resources for both the regulated community and the agency.

Statement on Small Entity Analysis and Economic Impact

Each proposed rule could impact a small entity. However, the impact will be neutral or positive. Several of the proposals make the process involved more efficient and will save time and money for applicants and others interacting with the Public Service Commission. No alternatives were considered other than making no changes at all, which imposes a greater economic and regulatory burden on all impacted entities, including small entities and the agency.

Statement on Regulatory Analysis and Takings Assessment

Since none of the proposals will impact the regulated community by more than \$50,000, and no one has requested a regulatory analysis, none is being prepared at this time for any of the proposed rule changes.

Since none of the proposed rules constitutes a taking of private real property, no Takings Assessment is being prepared.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Practice and Procedure
Rulemaking**

Case No. AD-17-49

FISCAL NOTE

25 April 2017

Adoption of the proposed rules in the captioned case is not expected to have any impact on state expenditures or revenues.